



## Unisex actuarial factors

The European Court of Justice (ECJ) recently decided that the use of sex-specific transfer factors under the unfunded “pay as you go” European Union pension scheme amounted to unlawful sex discrimination. Some industry commentators have suggested that this decision (the case was called Lindorfer) throws doubt on the legality of the continued use of sex-specific factors by UK occupational pension schemes.

The Lindorfer case seems to turn on the following facts:

- the particular wording of the EU Staff Regulations (which govern the employment of the EU's own employees and which give an absolute right to equal treatment);
- the scheme in question was an unfunded scheme; and
- the EU had changed the factors to unisex after the complaint had been brought (which undermined its argument that sex-specific factors were necessary to ensure sound financial management).

## Funded schemes

Our view is that this case has no implications for **funded** UK occupational pension schemes.

The ECJ, in the 1993 Neath case, confirmed that the use of sex-specific actuarial factors by funded pension schemes was not unlawful sex discrimination. This position is confirmed in the 2006 EU Equal Treatment Directive. In our view, nothing in the Lindorfer case undermines the decision in Neath or the Directive - and the Advocate-General in her related opinion specifically refers to sex-specific factors as being permitted.

## Unfunded schemes

As far as unfunded schemes are concerned, the position is less clear cut. Neither Neath nor the Directive expressly say that unfunded schemes *can* use sex-specific factors. The decision in Lindorfer was based on the scheme concerned, and does not necessarily mean that other unfunded schemes *cannot* use sex specific factors, but there is a risk that the ECJ might reach that conclusion in due course. In our view, unfunded schemes do not have to stop using sex specific factors (most commonly, for converting unfunded pension into cash, for consistency with the approach taken in a related funded scheme), but we think a watching brief in this area would be prudent.

*Case: Maria-Luise Lindorfer v Council of the European Union [2007] Case C-227/04 P*

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